IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3724 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DHANSUKH ALIAS LAMBO DADHI MONABHAI KHARVA

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 3724 of 2001

MR PRAVIN GONDALIYA for Petitioner No. 1

RULE SERVED for Respondents No. 1,3

MR S.S.PATEL, AGP for Respondent No. 2

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 04/10/2001

ORAL JUDGEMENT

In exercise of powers under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 ('the Act' for short), District Magistrate, Junagadh, vide order dated March 14, 2001 (Annexure-A to the petition) detained the petitioner/detenu.

2. The averments made in the petition and the grounds of detention manifest that the detaining authority has considered the petitioner as a Bootlegger within the meaning of Section 2(b) of the Act as four cases under the Prohibition Act are registered against the petitioner which are pending trial and statements of five anonymous witnesses are recorded and therefore, according to the detaining authority his activities are prejudicial to the maintenance of public order and, therefore, power under Section 9(2) of the Act is exercised by the detaining authority.

3. By filing this petition under Article 226 of the Constitution, petitioner has assailed the impugned order of detention on various grounds and prayed to issue a writ of habeas corpus or any other appropriate writ, order or direction quashing the impugned order of detention and setting him at liberty forthwith.

4. Though the petitioner has challenged the order of detention on various grounds, Mr. Praveen Gondalia, learned advocate for the petitioner has restricted his arguments to the effect that subjective satisfaction recorded by the detaining authority cannot be considered as genuine as there was no enough material necessitating the detention of a person in custody. The detaining authority has observed in his order that petitioner would indulge in the same activity after being released on bail and therefore, it has become necessary to detain him. On this sole ground, the order of detention deserves to be quashed and set aside.

5. Mr S.S.Patel, learned AGP has appeared on behalf of the respondents and has opposed the petition by making oral submissions. He, however, does not dispute the factual aspects with regard to the observations made by the detaining authority in para 2 of the order of detention. He, therefore, urged to pass appropriate order.

6. I have considered the submissions advanced by the learned advocates appearing for the parties. I have also perused the averments made in the petition as well as the documents annexed therewith and the impugned order.

7. It is true that on having perusal of para 2 of the impugned order the detaining authority has stated therein that the petitioner is carrying the activities of selling foreign liquor in a bulk quantity. He is arrested frequently and offences are registered against him. The detaining authority has observed in his order that petitioner would indulge in the same activity after being released on bail and, therefore, with a view to curb the antisocial activities of the petitioner and for the purpose of maintenance of public order the petitioner's detention has become necessary and therefore, order of detention is passed. In fact, petitioner was never released on bail with respect to the last offence registered against him. The detaining authority was not aware at the time of passing the impugned order as to whether petitioner is in custody or is released on bail, therefore, it can be said that the subjective satisfaction recorded by the detaining authority is not genuine. On the contrary, the detaining authority has supplied the relevant papers including papers relating to the bail application in the aforesaid offence, therefore, also, detaining authority has not applied its mind properly. Therefore, it can be said that the impugned order of detention passed by the detaining authority is in clear non-application of mind and on this sole ground petition deserves to be allowed by quashing and setting aside the order of detention and setting the petitioner at liberty.

8. A similar question arose before the Hon'ble Supreme Court in the case of ABDUL SATHAR IBRAHIM MANIK VS. UNION OF INDIA - 1991 (SC) 2261 in which it has been held that the detention order can validly be passed even in a case of a person who is already in custody. In such a case it must appear from the ground that the authority was aware that the detenu was in custody.

9. Applying the aforesaid principle laid down by the Supreme Court to the facts of the present case, in the instant case, in para 2 of the detention order, the detaining authority has observed that the petitioner was released on bail in connection with the last offence and he is carrying the activities of selling foreign liquor and therefore, detention order is passed in clear non-application of mind and on this sole ground the order of detention stand vitiated and the petition deserves to be allowed by quashing and setting aside the detention order and setting the petitioner at liberty forthwith.

10. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of

detention dated March 14, 2001 is hereby quashed and set aside. The petitioner/detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A.M.Kapadia, J)

Jayanti*